

**COMPLAINT INVESTIGATION
CORAL ACADEMY OF SCIENCE CHARTER SCHOOL
(#CASLV052809)**

INTRODUCTION

On 5/28/09 the Nevada Superintendent of Public Instruction received a complaint dated 5/23/09 from a special education teacher (complainant) alleging violations of special education law with respect to the operation of the Coral Academy of Science Charter School (CASLV) where she was employed. An investigation team was appointed to examine the allegations that CASLV: 1) had an unsafe environment for some students because of some incidents that occurred; 2) allowed a parent to bully the complainant on various occasions; 3) engaged in testing irregularities during the administration of proficiency exams in spring 2009; 4) inappropriately assigned the complainant to teach physical education; 5) screened out students with disabilities from the school's entry selection process; 6) did not implement certain students' individualized educational programs (IEPs) in the area of English; 7) did not conduct child find activities upon referral, specifically screening; 8) did not provide testing accommodations for special education students during the administration of proficiency exams in spring 2009 and specifically did not provide testing in a small group setting, other than the regular classroom.

The complainant was informed that the Nevada Department of Education (NDE) did not have jurisdiction, through the special education complaint process, to investigate allegations #1 — #6 above. With regard to the allegations #1-#4, the complainant was referred to other divisions of NDE to address her allegations outside of the special education complaint process. With respect to allegation #5, the complainant was referred to the Executive Director of CASLV and to the U.S. Office of Civil Rights.

The complainant was also contacted by the complaint investigation team and informed that with regard to allegation #6, alleging violations with respect to specific students' IEPs, the complaint did not include the information required by state regulations at NAC §388.318 for the acceptance of this issue. The complainant was informed that this information could be submitted in the filing of a new complaint but would not be considered in this complaint investigation.

COMPLAINT ISSUES

The allegations articulated in the complaint and further clarified by interviews and a review of the documents raised the following issues for investigation:

Issue 1: Whether CASLV complied with state requirements to implement child find procedures.

Issue 2: Whether CASLV complied with state requirements to implement the IEPs of its special education students specifically with regard to providing the accommodation of small group test administration, other than in the regular classroom, for the proficiency exams in spring 2009.

PERSONS INTERVIEWED AND STATEMENTS REVIEWED

The investigation team interviewed and/or reviewed statements from the following persons:

- Special education teacher (complainant)
- Executive director of CASLV (director)
- A CASLV administrator (administrator)
- 4th grade reading teacher
- 5th grade math/science teacher
- 5th grade reading/writing/social studies teacher

DOCUMENTS REVIEWED

The documents reviewed by the investigation team included the following:

- CASLV's Special Education Policies and Procedures (CASLV Manual)
- CASLV 2008/2009 school calendar

- Correspondence from CASLV staff dated 5/5/09, 6/4/09, 6/5/09, 6/8/09, and 6/19/09
- CASLV Summary of Testing Accommodations for Special Education Students (Summary of Testing Accommodations)
- CASLV Summary of follow-up for possible Child Find Students (Summary of Possible Child Find Students)
- Correspondence from complainant dated 6/7/09
- Emails from complainant to teachers dated 10/3/08 through 4/23/09
- Emails from 5th grade teacher to complainant dated 1/12/09 and 1/15/09
- Teacher observation form completed by 5th grade teacher
- IEPs of 17 special education students
- List of students receiving special education services during the 2008/09 school year

The investigation team also reviewed the following material:

- Nevada Administrative Code (NAC), Chapter 388
- Individuals with Disabilities Education Act (IDEA) Regulations, 34 CFR Part 300
- Federal Register/Vol. 71. No. 156/Monday, August 14, 2006, p. 46636.
- NDE Instructional and Assessment Accommodations for Students with Disabilities Technical Assistance Document (NDE Technical Assistance Document).

FINDINGS OF FACT

This investigation involved systemic complaints about CASLV, a state-sponsored charter school in the state of Nevada. A review of documents, statements submitted by CASLV staff, as well as interviews with the complainant and the director revealed the following facts.

Child Find Procedure Upon Referral

The complainant stated that she had referred a number of students to teachers to determine whether the students should be referred for evaluation to determine eligibility for special education. She referenced these students as possible child find students. The complainant stated that she had made the requests to the teachers either verbally or in emails to conduct prior intervention strategies, but that following her requests, the teachers did not use prior intervention strategies as part of the referral process, as was required by the CASLV Manual. The complainant was not able to produce copies of any of the emails, nor documentation or independent confirmation of the verbal requests she reported having made, stating that CASLV would have copies of the emails on their server. She reported that the parents of the referred students were reluctant to be involved in this complaint and therefore she did not provide contact information to the investigation team regarding specific students.

CASLV provided a Summary of Possible Child Find Students to the investigation team that included eight student names and a written summary of actions taken in each case. The Summary of Possible Child Find Students stated that for three of the students, meetings were held to determine the scope of the evaluation. A fourth student was described as demonstrating behavioral concerns that prompted the faculty to start collecting data beginning in March 2009. No documentation was presented that any data had been collected for any of the four students, or that prior intervention strategies had been undertaken. The Summary of Possible Child Find Students also stated that a fifth student was withdrawn from the school, a sixth and seventh were evaluated and found eligible for special education and an eighth student was exited from special education and put on a 504 plan.

In a 3/16/09 email the complainant requested that faculty begin collecting data for a possible child find student. This student was not listed on the Summary of Possible Child Find Students. No documentation was provided by CASLV that data were collected or prior intervention strategies undertaken with respect to this student.

CASLV did provide a series of emails describing prior intervention strategies, specifically tutoring, undertaken by the teachers for an additional student (not listed on the Summary of Possible Child Find

Students) who had been referred by the complainant to determine whether [student] needed to be referred for an evaluation.

The CASLV Manual states, once a referral is received “Unless the student is immediately suspected of having a disability, prior intervention strategies must be attempted and documented before an evaluation referral is appropriate”.

Providing Accommodations for Proficiency Exams in Spring 2009

In spring 2009, proficiency exams were administered to students at CASLV. A review of the IEPs of the 17 special education students enrolled in CASLV during Spring 2009 showed that the IEPs for 13 of the students required testing accommodations. Specifically, the box checked on the Nevada Proficiency Examination Program IEP Accommodations Form stated “Small group administration (other than regular classroom) will be allowed” when participating in the proficiency exams (small group accommodation).

The complainant alleged that some of the 13 special education students taking the proficiency exams were not provided the small group accommodation. In response to the allegation that some of the special education students were not provided with the small group accommodation, the administrator, in a written statement dated 5/5/09, stated that some of the students with small group accommodation in their IEPs “chose to stay in their classrooms [for the proficiency exams] since they did not want to be in a mixed grade room. CASLV maintains small class sizes. For example our 8th grade classes currently have about 15 students. Considering this, students were allowed to stay in their regular classrooms to finish their [proficiency] exams”. The administrator explained that because the wording in the small group accommodation stated that the small group accommodation **will be allowed**” (emphasis added) and the students did not want to leave the regular classroom, they were allowed to stay in the regular classroom.

The Summary of Testing Accommodations stated that two 8th grade students, whose IEPs required testing accommodations, including the small group accommodations, took three of the proficiency exams in the regular classroom. The Summary of Testing Accommodations also stated that CASLV believed the students had the *option* of sitting in a small-group environment, not that it was *mandated* by checking this box on the form.

CONCLUSIONS OF LAW AND REASONS

Issue 1: Whether CASLV complied with state requirements to implement child find procedures.

This complaint concerned an allegation that CASLV did not implement child find procedures upon referral, specifically that the teachers refused to collect data or attempt prior intervention strategies as required by the CASLV Policies and Procedure Manual.

State regulations at NAC §388.215 (1) and (5)(a) require that “Each public agency shall take measures pursuant to 34 C.R.F. §300.111 to ensure that every pupil with a disability who resides within the school district is identified, evaluated and served in the manner appropriate to the unique needs of the pupil. These measures must include, without limitation: 1. The organization of a program for screening pupils within the jurisdiction of the public agency; ... 5. “The establishment of a system of records for the purpose of verifying: (a) The implementation of the foregoing measures; ...”.

The United States Department of Education’s (USDOE’s) discussion in the 2006 IDEA regulations on the screening of students following referrals is instructive with regard to understanding the responsibilities of a public agency if a child is referred because a source suspects a child may be eligible for special education. The USDOE indicated that “The requirements in §300.301(b) pertain to the initiation of an evaluation under §§300.301 through 300.305 and should not be confused with the State’s child find responsibilities in §300.111 and section 612(a)(3) of the Act. The child find requirements permit referrals from any source that suspects a child may be eligible for special education and related services. Child

find activities typically involve some sort of screening process to determine whether the child should be referred for a full evaluation to determine eligibility for special education and related services. Therefore, persons such as employees of the SEA, LEA, or other public agencies responsible for the education of the child may identify children who might need to be referred for an evaluation. However, it is the parent of a child and the public agency that have the responsibility to initiate the evaluation procedures in §§300.301 through 300.311 and section 614 of the Act.” (Federal Register/Vol. 71. No. 156/Monday, August 14, 2006, p. 46636).

In this case, the complainant stated she had made referrals for a number of students in order to determine whether they should be referred for evaluation to determine eligibility for special education and related services. Although the complainant could not provide documentation of these referrals, CASLV did provide a Summary of Possible Child Find Students, listing actions taken with regard to each one as well as emails from the complainant regarding possible child find students.

The Summary of Possible Child Find Students, as well as the 3/16/09 email from the complainant to the teachers, confirmed that there were at least 5 possible child find students for whom intervention strategies should have been undertaken. There was no documentation that any prior intervention strategies took place for these students as was required in accordance with NAC §388.215(1) as described above.

The CASLV Manual includes a requirement for a preliminary screening procedure to determine whether a child should be referred for a full evaluation to determine eligibility for special education and related services, specifically requiring the use of prior intervention strategies and documentation of those strategies. As indicated in the discussion of the IDEA regulations above and NAC §388.215(1), this screening process is permissible when it is not the initiation of the evaluation procedures by the parent or the LEA. Since CASLV opted to adopt these measures with respect to the identification and evaluation of students suspected of being eligible for special education, the school was required to abide by them when the complainant referred the students. In addition, CASLV was required to set up a system of records to document the implementation of its identification and evaluation procedures, and failed to do so with respect to the five students who had been identified as possible child find students and who were not immediately suspected of having a disability and referred for special education.

Therefore, the investigation team concluded that CASLV did not comply with state regulations when it failed to implement child find procedures.

Issue 2: Whether CASLV complied with state requirements to implement the IEPs of its special education students specifically with regard to providing the accommodation of small group test administration, other than in the regular classroom, for the proficiency exams in spring 2009.

This complaint concerned an allegation that CASLV did not provide testing accommodations for some of the special education students during the administration of the proficiency exams in spring 2009, and specifically did not provide testing in a small group setting, other than the regular classroom as specified in the students’ IEPs and checked on the preprinted Accommodations Form for the Nevada Proficiency Examination Program.

State regulations at NAC §388.281(6)(g) require that the school district shall “provide the services and instruction deemed necessary for the pupil by the [IEP] committee.”

The NDE, in its Instructional and Assessment Accommodations for Students with Disabilities Technical Assistance Document (NDE Technical Assistance Document) clarifies “It is important to note that there are specific accommodations that are “allowable” as part of Nevada’s Proficiency Examination Program (NPEP)... Each year, the Nevada Department of Education produces a list of the accommodations that are allowable for each of the assessments that are part of the NPEP....”.

In this case, the IEPs of 13 of the 17 special education students whose IEPs were reviewed by the investigation team, required that they be provided with the small group accommodation for the proficiency exams. Documents confirm that 2 of the 13 students were not provided the small group accommodation. While the administrator thought that the words on the test accommodation form “will be allowed” meant that it was a choice for the student to make, the words “will be allowed” indicated that the small group accommodation was an allowable accommodation for students whose IEP indicated they were in need of the small group accommodation. CASLV was required to provide the small group accommodation for all of the 13 students and failed to do so.

Therefore, the investigation team concluded that CASLV did not comply with state regulations to implement the IEPs of its special education students specifically when it failed to provide the accommodation of small group test administration, other than in the regular classroom, for the proficiency exams in spring 2009.

ORDER FOR CORRECTIVE ACTION

The CASLV is required to take corrective actions to address the violations found in this complaint investigation. Specifically, CASLV did not: 1) implement required child find procedures and document actions taken and 2) did not implement students’ IEPs with respect to the accommodation requiring small group administration, other than in the regular classroom, when taking proficiency exams.

Professional Development/Training

Within 30 days of receipt of this report, the CASLV must develop and submit to the NDE a proposed Corrective Action Plan (CAP).

The CAP must include a plan to review and revise, if necessary, the Policies and Procedures Manual to include: 1) the procedures for implementing and documenting measures taken when students are referred from a source that suspects a child may be eligible for special education and related services and 2) the implementation of testing accommodations in students’ IEPs with regard to the administration of proficiency exams. This review and revision must occur within 45 days following the NDE’s approval of the CAP.

A plan to provide training on implementing and documenting measures taken when students are referred from a source that suspects a child may be eligible for special education and related services as well as implementing testing accommodations for proficiency exams, must be provided to all teaching and administrative staff at CASLV. This review and revision must occur within 60 days following the NDE’s approval of the CAP and should take place after the policies and procedures component of the CAP has been completed.

The CASLV must engage an independent consultant to assist the school in implementing the CAP, to include the review and revision of the Policies and Procedures Manual as well as to conduct the required professional development. The proposed consultant must be identified by name in the proposed CAP, and must be approved by the NDE before CAP implementation can occur. In its CAP, the CASLV may request financial assistance from the NDE in order to support the costs associated with the independent consultant.

The CAP must be approved by the NDE prior to implementation. Following implementation of the approved activities, documentation of the CASLV’s corrective actions must be provided to the NDE within 30 days of completion.